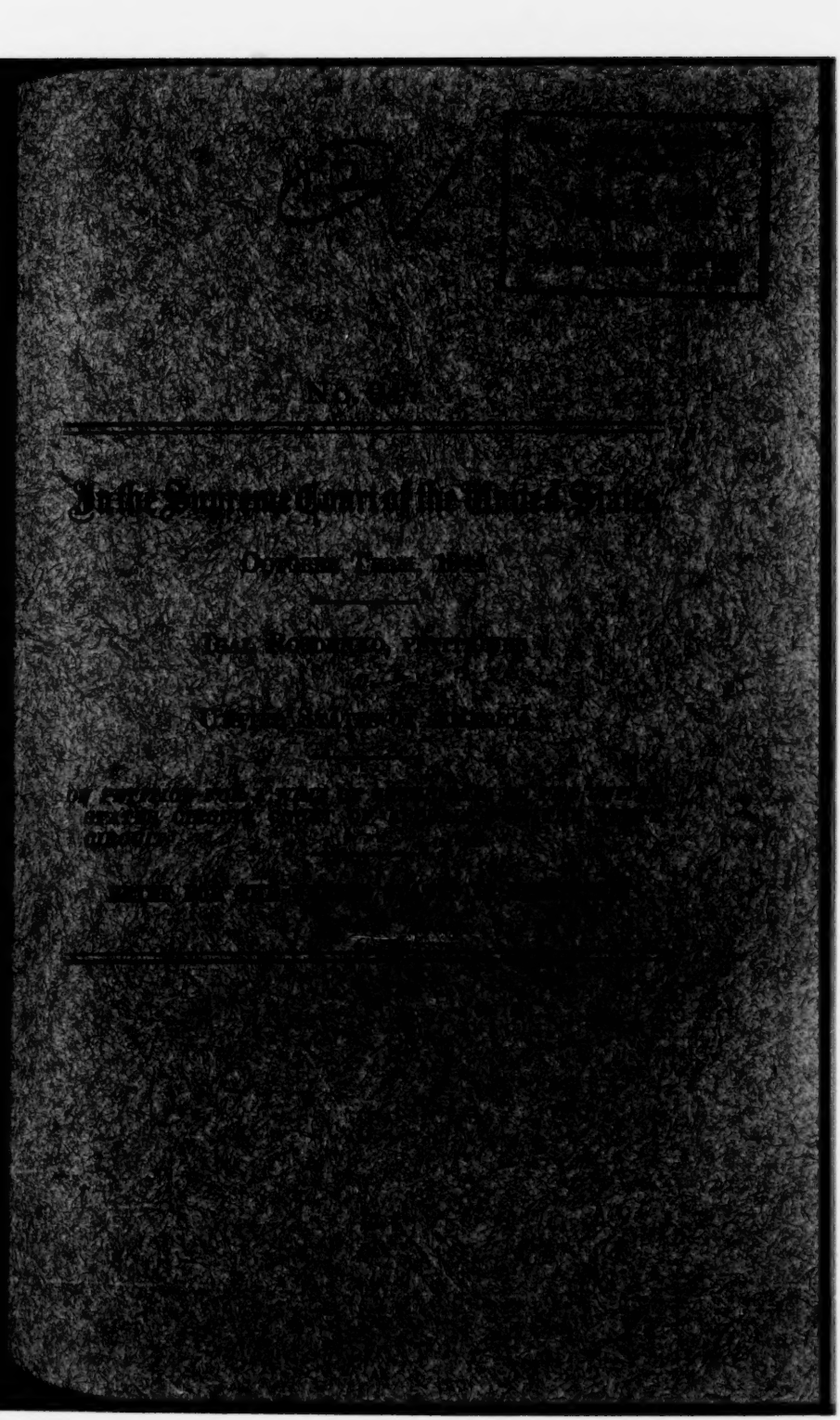

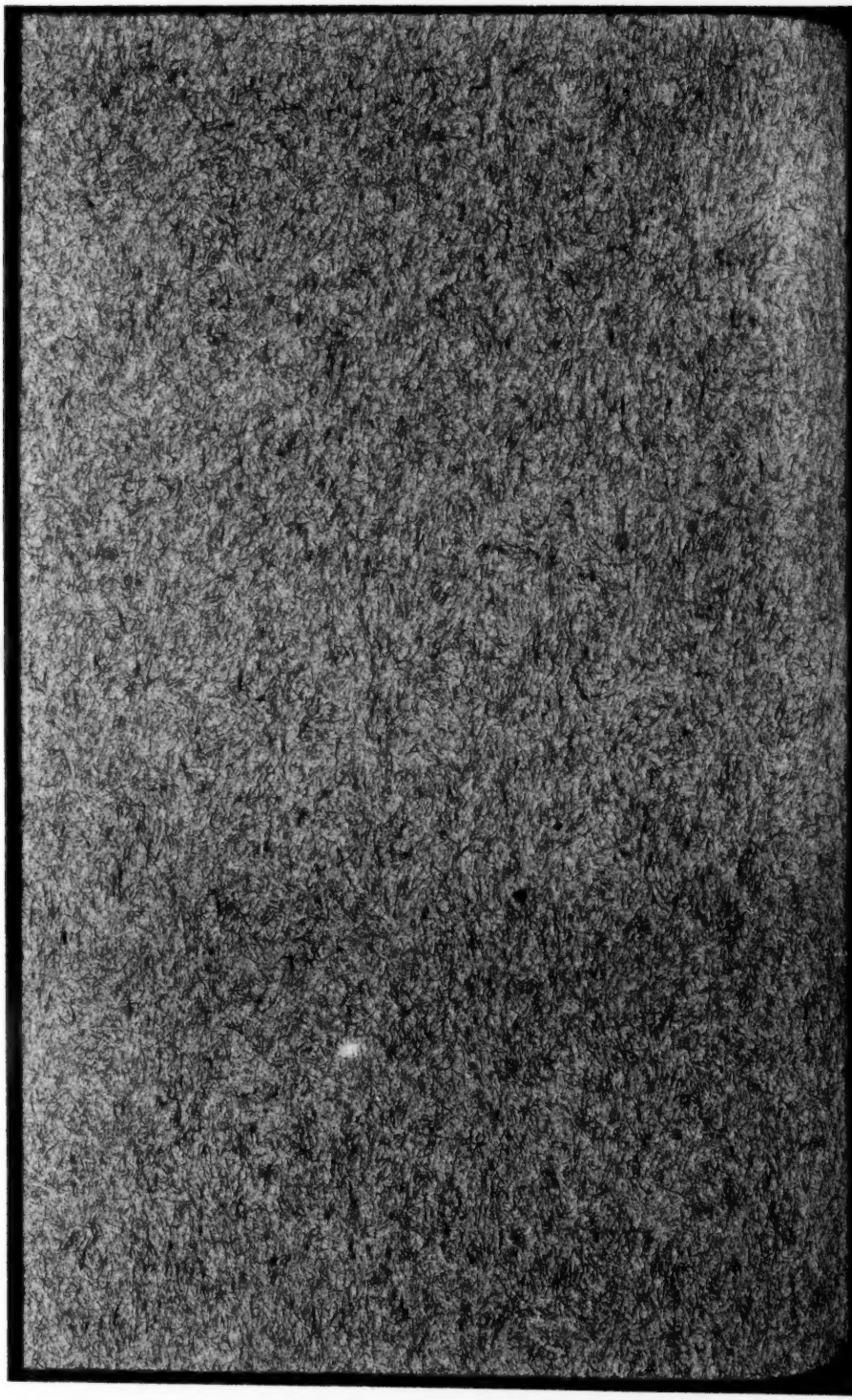

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statute and regulations involved	2
Statement	2
Argument	5
Conclusion	19
Appendix	20

CITATIONS

Cases:	
Angelus v. *Sullivan*, 246 Fed. 54	6, 11
Brooks v. *United States*, No. 189, decided February 2, 1945 (C. C. A. 2)	6
Currin v. *Wallace*, 306 U. S. 1	12
Endo, Ex parte, No. 70, decided December 18, 1944	11
Franke v. *Murray*, 248 Fed. 865	11
Giese v. *United States*, No. 192, this Term	14
Gormly v. *United States*, No. 220, October Term, 1943, certiorari denied, 320 U. S. 753	5
Hamilton v. *Regents*, 293 U. S. 245	6
Heflin v. *Sanford*, 142 F. 2d 798	6
Hopper v. *United States*, 142 F. 2d 181	6
Jacobson v. *Massachusetts*, 197 U. S. 11	6
Jones v. *Perkins*, 245 U. S. 390	6
Kramer v. *United States*, No. 9812, decided February 8, 1945 (C. C. A. 6)	6, 17
Opp Cotton Mills, Inc. v. *Administrator*, 312 U. S. 126	12
Rase v. *United States*, 129 F. 2d 204	6
Seele v. *United States*, 133 F. 2d 1015	11
Selective Draft Law Cases, 245 U. S. 366	6, 11
Southern Pacific Co. v. *United States*, 285 U. S. 240	16
United States ex rel. Bergdoll v. *Drum*, 107 F. 2d 897	11
United States v. *Curtiss-Wright Export Corp.*, 299 U. S. 304	11
United States v. *Grimaud*, 220 U. S. 506	12
United States v. *MacIntosh*, 283 U. S. 605	6
United States v. *Rock Royal Co-op*, 307 U. S. 533	12
United States v. *Sugar*, 243 Fed. 423	6, 11
United States v. *Van Den Berg*, 139 F. 2d 654	6
United States ex. rel. Zucker v. *Osborne*, No. 192, decided February 2, 1945 (C. C. A. 2)	6
Weightman v. *United States*, 142 F. 2d 188	6, 11

Statutes: Page

Act of May 18, 1917, c. 15, sec. 4, 40 Stat. 76 (50 U. S. C. App. 204) 7, 11
Act of March 16, 1918, c. 23, 40 Stat. 450 7
Selective Training and Service Act of 1940, as amended, 54 Stat. 885 (50 U. S. C. appendix 301–318):
Sec. 1 (b) 8
Sec. 5 (g) 12, 15, 16, 20
Sec. 10 (a) 13, 14, 15, 21
Sec. 10 (b) 15, 24
Sec. 11 24
Act of April 5, 1941, 55 Stat. 92 18
Act of June 27, 1942, 56 Stat. 392 18
Act of March 2, 1943, 57 Stat. 4 ..... 18, 19
Act of July 1, 1943, 57 Stat. 347 19
Act of July 12, 1943, 57 Stat. 494 19
Act of December 5, 1943, 57 Stat. 596 15
Act of June 28, 1944, Pub. Law No. 372 19

Regulations:
Selective Service Regulations:
652.14 25
653.1 26
653.1 (b) 26
653.1 (c) 26
653.2 (a) 26
653.2 (b) 26
653.2 (c) 27
653.12 27

Miscellaneous:
Administrative Order No. 26, 7 F. R. 10512 13
Executive Order No. 8675, 6 F. R. 831–832 ..... 8, 13
Executive Order No. 9279, 7 F. R. 10177 13
6 F. R. 2001–2003; 32 C. F. R. 1941 Supp., 653.1–23 8
Hearings before the House Committee on Military Affairs, 76th Cong., 3d sess., vol. 1, p. 206 17
29 Op. A. G. 298 16
Selective Service in Peacetime, pp. 187–201 8
Selective Service in Wartime, pp. 255–272 8
Selective Service Order No. 111, 8 F. R. 8988 4
Statement Concerning the Treatment of Conscientious Objectors in the Army (June 18, 1919) 7
War Department Special Order 231 12
Hearings on H. R. 2788, Subcommittee of the Committee on Appropriations, House of Representatives, 77th Cong., 1st sess 18
Hearings on H. R. 6430 before the Subcommittee of the Committee on Appropriations, House of Representatives, 77th Cong., 2d sess 18

Miscellaneous—Continued. Page

Hearings on H. R. 82 before the Subcommittee of the Committee on Appropriations, House of Representatives, 78th Cong., 1st sess. . . . 18
Hearings on H. R. 2935 before the Subcommittee of the Committee on Appropriations, House of Representatives, 78th Cong., 1st sess. . . . 19
Hearings on H. R. 2996 before the Subcommittee of the Committee on Appropriations, United States Senate, 78th Cong., 1st sess. . . . 19
Hearings on H. R. 4879 before the Subcommittee of the Committee on Appropriations, House of Representatives, 78th Cong., 2d sess. . . . 19
Hearing on S. 2708, Subcommittee of the Committee on Military Affairs, United States Senate, 77th Cong., 2d sess. . . . 19
Hearing on S. 315 and S. 675, Committee on Military Affairs, United States Senate, 78th Cong., 1st sess. . . . 19

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 947

IGAL ROODENKO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 79–85) is not yet reported. The memorandum opinion of the district court (R. 7–15) is reported at 55 F. Supp. 648.

JURISDICTION

The judgment of the circuit court of appeals was entered December 22, 1944 (R. 85). A petition for rehearing (R. 87, 91–101) was denied January 9, 1945 (R. 102). The petition for a writ of certiorari was filed February 13, 1945. The jurisdiction of this Court is invoked under

Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether Section 5 (g) of the Selective Training and Service Act of 1940, and the Selective Service Regulations issued thereunder, requiring assignment of conscientious objectors to both combatant and noncombatant military service to work of national importance under civilian direction, are constitutional.

2. Whether the work to which petitioner was assigned was under civilian direction.

STATUTE AND REGULATIONS INVOLVED

The pertinent statutory provisions and regulations are set forth in the Appendix, *infra*, pp. 19–26.

STATEMENT

On November 24, 1943, petitioner was charged in a one count indictment (R. 1–3) filed in the United States District Court for the District of Colorado with violation of Section 11 of the Selective Training and Service Act of 1940. The indictment alleged that, having been classified IV–E and having been assigned to a Civilian Public Service Camp, petitioner wilfully failed and refused to perform the duties assigned to him by the director of the camp, as required by the Selective Training and Service Act of 1940

and the Selective Service Regulations issued thereunder.

It was stipulated between the parties that the facts set forth in the indictment were true (R. 19–20). Those facts are that petitioner was classified IV–E (conscientious objector to combatant and non-combatant military service) by his local board and was thereafter directed to report for work of national importance. He reported on February 9, 1943, and entered Civilian Public Service Camp No. 52, Powellsville, Maryland. Thereafter, on July 8, 1943, he was transferred to Civilian Public Service Camp No. 111, Mancos, Colorado. After he had been in the camp for several months and apparently had fully performed his duties, petitioner, during the period from October 28 to November 5, 1943, refused to perform the duties assigned to him by the director of the camp. (R. 2.) It appears from a letter written by petitioner to the director of the camp after he had been indicted in the present case that petitioner went on a "hunger and work-strike" and that he did so solely "in protest against existing censorship conditions in the federal prison system." Petitioner expressly stated that his conduct was not motivated by his personal status or conditions at the camp. He also sought permission from the director of the camp to return to the camp until his case was called for trial. (R. 36–37.)

The director of the camp, Charles F. Thomas, testified that Civilian Public Service Camp No. 111 formerly was a Civilian Conservation Corps camp and that it was established as a camp for conscientious objectors by Order No. 111 of the Director of Selective Service. That order (8 Fed. Reg. 8988) provides, in part, that:

> The work to be undertaken by the men assigned to Civilian Public Service Camp No. 111 will consist of storage dam construction, riprapping, reservoir clearing, canal excavation, forest fire fighting, fire presuppression, and various other allied projects under the technical direction of the Bureau of Reclamation of the Department of the Interior. This Bureau will also be responsible for the housing, feeding, clothing, discipline and provision of necessary medical and dental care. Men shall be assigned to and retained in camp in accordance with the provisions of the Selective Training and Service Act of 1940 and regulations and orders promulgated thereunder. Supervision and control of the Mancos Project shall be under the Selective Service System through the Camp Operations Division of National Selective Service Headquarters.

Thomas testified that the work of the camp and its operations were as set forth in Order No. 111 and that he is an employee of the Bureau of Reclamation, paid by that agency; that registrants assigned to the camp live in barracks, eat in mess

halls, and are furnished clothing of a more or less uniform type and quality "equal to that furnished men in the Army;" that there were no Army personnel and no armed guards stationed at the camp and that Army discipline was not maintained; that one representative of the Selective Service System who inspected the camp appeared in military uniform and that when Thomas had conferred with the Director of the Selective Service System and the Chief of the Camp Operations Division, both of these officials were in military uniform. (R. 20–23.)

On this evidence, having waived a jury trial (R. 5), petitioner was found guilty by the court and sentenced to imprisonment for a term of three years (R. 15). Upon appeal to the Circuit Court of Appeals for the Tenth Circuit, the judgment of the district court was affirmed (R. 86–87.)

ARGUMENT

1. Relying on the First, Fifth, and Thirteenth Amendments and the alleged unlawful delegation of legislative power, petitioner, as his principal ground for certiorari, challenges the constitutionality of Section 5 (g) of the Selective Training and Service Act and the Regulations issued thereunder (Pet. 6–7, 9–18). The very same contentions were unsucessfully pressed upon this Court in *Gormly* v. *United States,* No. 220, October Term, 1943, certiorari denied, 320 U. S. 753, and have been uniformly rejected in the lower federal courts.

Weightman v. *United States,* 142 F. 2d 188 (C. C. A. 1); *Brooks* v. *United States,* No. 189, decided February 2, 1945 (C. C. A. 2); *United States ex rel. Zucker* v. *Osborne,* No. 192, decided February 2, 1945 (C. C. A. 2); *Heflin* v. *Sanford,* 142 F. 2d 798 (C. C. A. 5); *Kramer* v. *United States,* No. 9812, decided February 8, 1945 (C. C. A. 6); *Rase* v. *United States,* 129 F. 2d 204 (C. C. A. 6); *United States* v. *Van Den Berg,* 139 F. 2d 654 (C. C. A. 7); *Hopper* v. *United States,* 142 F. 2d 181 (C. C. A. 9).

For the convenience of the Court we reiterate the considerations which sustain the constitutional validity of Section 5 (g) and the regulations thereunder:

Once it is recognized, as we submit it must be, that military service may be required regardless of personal feelings and religious beliefs and does not constitute involuntary servitude,[1] and that exemption from such service is solely within the discretion of Congress,[2] the error of petitioner's contention becomes apparent. A provision for assigning conscientious objectors to work of national importance is a necessary and proper ad-

---

[1] *Selective Draft Law Cases,* 245 U. S. 366; *Jones* v. *Perkins,* 245 U. S. 390, *Angelus* v. *Sullivan,* 246 Fed. 54, 59–60 (C. C. A. 2); *United States* v. *Sugar,* 243 Fed. 423, 428 (E. D. Mich.); see *Jacobson* v. *Massachusetts,* 197 U. S. 11, 29.

[2] *United States* v. *MacIntosh,* 283 U. S. 605, 622; *Rase* v. *United States,* 129 F. 2d. 204, 210 (C. C. A. 6); *Hamilton* v. *Regents,* 293 U. S. 245, 263–264.

junct to the execution of the power to wage war and raise armies. This is convincingly demonstrated by the nature of the problems faced by the nation while at war, both in 1917–1918 and at the present time.

The Selective Draft Act of 1917 exempted conscientious objectors only from combatant service,[3] and the Army experienced serious difficulty in handling conscripts who were opposed even to noncombatant service. The Furlough Law of March 16, 1918,[4] made it possible for such conscientious objectors to be furloughed to engage in work under civilian direction. Theretofore, and even thereafter in the case of his failure to avail himself of a furlough, a conscientious objector who refused to perform noncombatant military service was subject to punishment by the military authorities.[5] The presence of such persons in the Army presented a problem of discipline and morale.

The experience of the first world war showed the propriety of making a different provision for registrants opposed by reason of religious training and belief to noncombatant as well as to combatant military service. To relieve them entirely

[3] Act of May 18, 1917, c. 15, sec. 4, 40 Stat. 76, 78–79 (50 U. S. C. App. 204).

[4] Act of March 16, 1918, c. 23, 40 Stat. 450.

[5] See *Statement Concerning the Treatment of Conscientious Objectors in the Army* (June 18, 1919), prepared and published by direction of the Secretary of War.

633682—45——2

of any obligation to render any service would obviously not accord with the principle of equality upon which the Selective Training and Service Act of 1940 is based.[6] The problem was resolved by providing for their compulsory assignment to work of national importance, under civilian direction.[7] As conscription of conscientious

[6] Section 1 (b) (50 U. S. C. App. 301b) provides: "The Congress further declares that in a free society the obligations and privileges of military training and service should be shared generally in accordance with a fair and just system of selective compulsory military training and service."

[7] By virtue of the authority vested in him by the Act, the President authorized the Director of Selective Service to designate or establish work of national importance. Executive Order No. 8675 (Feb. 6, 1941), 6 Fed. Reg. 831–832. In turn the Director has so designated certain camp projects, including the one at Mancos, Colorado, to which petitioner was assigned and the majority of these camps are managed, subject to the direction of the Director of Selective Service, by the National Service Board for Religious Objectors, a private organization representing various religious groups; others, including the camp to which petitioner was assigned, are government operated. The actual work project in each camp is under the direction of technical agencies such as the United States Departments of Agriculture and the Interior. Overall authority and responsibility is vested in the Director of Selective Service, who has prescribed regulations for the operation and goverance of the camps. 6 Fed. Reg. 2001–2003 (April 11, 1941); 32 C. F. R., 1941 Supp. 653.1–23 (see Pet. 23–32). In addition to work in camps conscientious objectors are assigned to work in hospitals, training schools for boys, agriculture experiment stations and various state and federal government agencies. For an extensive statement of the nature of the camps, the control exercised over them, their work, and the participation of the various religious organizations in their operation, see the annual reports of the Director of Selective Service, *Selective Service in Peacetime*, pp. 187–201, and *Selective Service in Wartime*, pp. 255–272.

objectors for military service is within congressional power, their assignment to work analogous to noncombatant service in the armed forces, but under civilian direction to avoid offending their consciences, is clearly within congressional power. Congress has not, as petitioner contends (Pet. 17), annexed an unconstitutional condition to a privilege, but has provided for a draft of manpower for two different purposes: service in the armed forces, and work of national importance of a nonmilitary character. The line between the two is drawn in part on the basis of the individual registrant's usefulness. Congress has regarded men over forty-five as less useful for the present in military than in nonmilitary service. It has likewise so regarded conscientious objectors, whose mental attitude sufficiently impairs their military usefulness to render their induction into military service unnecessary in the nation's interest if another form of service can be found for them in lieu thereof. That petitioner would be in military service apart from the single circumstance of his being a conscientious objector, is a sufficient basis for his being treated differently from those allowed to remain in civilian life for other reasons.

Rather than interfering with the free exercise of religion, as petitioner contends (Pet. 16–17), the Act and Regulations, we believe, manifest a desire both on the part of Congress and the Selective Service System to permit the free exercise of religion, but in a manner which considers the

needs of a nation waging total war. Contrary to petitioner's view (Pet. 14–16), we perceive no reason why in administering the Act, the Director of Selective Service may not place conscientious objectors in work of national importance by requiring them to report to Civilian Public Service Camps for such work. In fact, sound policy requires that persons excused from military service because of their conscientious objections should be treated much the same as persons serving in the military forces, at least to the extent that such treatment does not conflict with their conscientious objections.[8] If it so desired, Congress might have exempted conscientious objectors from all service, as it did ministers of religion, but it was not required to do so as petitioner seems to assume. Its refusal to do so shows that Congress sought to grant conscientious objectors opportunity to serve the nation too, but in a manner not inconsistent with their religious beliefs. As we have shown, supra, p. 8, the Director of Selective Service has relied on various religious groups in the country for voluntary aid in the operation of the

[8] Thomas, the camp director, testified (R. 22) that registrants assigned to the camp who volunteered to do so were "farmed out" to assist farmers in the vicinity of the camp. We are advised by the Selective Service System that provision is made for placing such registrants on "detached service" and that of the 7,000 assignees in Civilian Public Service Camps, almost 3,000 have declined to leave the camps to work either in various state and national government agencies, or for farmers or in other activities essential to the national welfare and consistent with their religious beliefs.

Civilian Public Service Camps, a step which goes far in securing the free exercise of the religious convictions which forbid participation in war.

We think that petitioner's reliance (Pet. 15) on *Ex parte Endo,* No. 70, decided December 18, 1944, is misplaced. That this case is completely dissimilar factually from the situation with which the Court was there concerned is manifest once it is recognized that performance of work of national importance is a congressional grant of which conscientious objectors may avail themselves only in lieu of military service.

Against the challenge of unconstitutional delegation of legislative power, both the Selective Draft Act of 1917 [9] and the present Act [10] have already been sustained. Delegation to the President as Commander in Chief has at least as strong a basis as the broad delegation to him of the power of laying an embargo on the export of arms, which was sustained in *United States* v. *Curtiss-Wright Export Corp.,* 299 U. S. 304, 314–329, without reference to ordinary principles of delegation, for the reason that the matter was

[9] *Selective Draft Law Cases,* 245 U. S. 366, 389; *United States ex rel. Bergdoll* v. *Drum,* 107 F. 2d 897, 901 (C. C. A. 2); *Angelus* v. *Sullivan,* 246 Fed. 54, 60 (C. C. A. 2); *Franke* v. *Murray,* 248 Fed. 865, 869 (C. C. A. 8); *United States* v. *Sugar,* 243 Fed. 423, 434 (E. D. Mich.). Section 4 of the 1917 Act (50 U. S. C. App. 204) provided that conscientious objectors "shall not be exempted from service in any capacity that the President shall declare to be noncombatant."

[10] *Seele* v. *United States,* 133 F. 2d 1015, 1019–1020 (C. C. A. 8); *Weightman* v. *United States,* 142 F. 2d 188 (C. C. A. 1).

one of foreign relations over which the President has an independent constitutional authority. Petitioner's contention of unconstitutional delegation proceeds upon the premise that Congress has not established a standard for the administrative treatment of conscientious objectors. To the contrary, however, Section 5 (g) of the Act specifically provides that a conscientious objector found to be opposed to combatant and noncombatant military service, shall, in lieu of induction into the armed forces, be "assigned to work of national importance under civilian direction." This, we submit, is an adequate standard; the administrative detail concerning the accomplishment of the congressional directive is appropriately left to the discretion of the President and his delegates.[11]

2. Petitioner also contends (Pet. 18–19) that the work which he was directed to perform at Civilian Public Service Camp No. 111 was not to be performed under "civilian direction," as required by Section 5 (g) of the Act. While it is true that among the many persons concerned with the operation of Civilian Public Service Camps some are members of the armed forces on detached service,[12] we believe that the fact that the camp

[11] *Currin* v. *Wallace*, 306 U. S. 1, 17; *Opp Cotton Mills, Inc.* v. *Administrator*, 312 U. S. 126, 144; *United States* v. *Rock Royal Co-op.*, 307 U. S. 533, 574; *United States* v. *Grimaud*, 220 U. S. 506, 516.

[12] General Hershey, the Director of Selective Service, was detached from the War Department and assigned to the Selective Service System on September 30, 1940, by War Department Special Order 231.

was under the immediate direction of a civilian and that the ultimate responsibility for the camp rested in a civilian, the Chairman of the War Manpower Commission, shows that the camp was under civilian direction within the meaning of Section 5 (g).

Pursuant to the authority contained in Section 10 of the Act, the President by Executive Order 8675 (6 Fed. Reg. 831) authorized the Director of Selective Service to (1) establish, designate, or determine work of national importance under civilian direction; (2) to make the necessary assignments to such work; (3) to determine the agencies, organizations or individuals that may provide civilian direction thereof; (4) to have general supervision and control over such work; and (5) to prescribe the rules and regulations necessary to carry out the provisions of the Executive Order. This authority was subsequently transferred to the War Manpower Commission, and supervision of the Selective Service functions was lodged in the Chairman of the Commission, a civilian, who was responsible for these functions during the period involved in this case (Executive Order 9279, 7 Fed. Reg. 10177). These duties were subdelegated to General Hershey by the Chairman by Administrative Order No. 26 (7 Fed. Reg. 10512), but General Hershey's activities were subject to the supervision of the Executive Director of the War Manpower Commission who also was a civilian. General Hershey had established a

Camp Operations Division in the Selective Service System to assist him in the administration of the Civilian Public Service Camps. These agencies bore the responsibility for the over-all operation of the system of Civilian Public Service Camps at the time of petitioner's offense.

At the camp level, the immediate direction is lodged in a camp director. In government operated camps, such as the one to which petitioner was assigned, the director is a civilian employee of the technical agency concerned with the camp project. Thus, in this case, the camp director was an employee of the Bureau of Reclamation. As we have shown, *supra,* pp. 4–5, he was in direct charge of the camp and the assignees in it; he determined which assignees might be allowed to leave the camp on "detached service;" he exercised discretion in administering punishment for breach of the camp regulations and, in general, he ran the camp. Military personnel was not stationed at the camp and military discipline was not maintained (R. 23).

Preliminary to considering the merits of petitioner's contention, it may be noted that the legal issue presented here is substantially different from that before this Court in *Giese* v. *United States,* No. 192, this Term, affirmed by an equally divided Court on January 8, 1945. In that case the question related to Section 10 (a) (2) of the Act, which formerly required that "agencies of appeal," among other agencies of the Selective

Service System, should not be composed of members of the armed forces. In this case the question relates to Section 5 (g), which requires that work of national importance shall be under civilian direction, but which, unlike Section 10 (a) (2), does not provide in terms that members of the armed forces may not participate in the performance of that function.

Petitioner's contention in essence is that the participation of any members of the armed forces in the over-all administration of Civilian Public Service Camps converts what would otherwise be civilian direction into something other than that. In evaluating this position the following factors must be considered. Section 10 (b) of the Act authorizes the President to delegate his functions under the Act, and Section 10 (a) (3) permits him to delegate to officers of the armed forces. While this latter provision expressly provides that a delegation to a military officer may not be made in respect of positions on local boards, appeal boards and, formerly, agencies of appeal, no such limitation is expressed in respect of using the services of qualified officers of the armed forces in the administration of the provisions relating to conscientious objectors.[13]

[13] Section 10 (b) of the Act was amended by the Act of December 5, 1943, 57 Stat. 596, to provide that the President could delegate his authority only to the Director of Selective Service. While the amendment was subsequent to the offense charged in the indictment in this case, it evidences a congressional desire that selective service functions be lodged either

The administration of the camps is essentially a civilian function. Military jurisdiction over them does not exist and those members of the armed forces who participate in the administration of the camps participate only as staff members of National Headquarters of the Selective Service System and not as representatives of the War Department, or as local directors of the camps. That the Selective Service System is a civilian agency despite the fact that part of its staff consists of military personnel seems plain. Many agencies of the Government performing functions bearing relation to the war effort have on their staffs some military personnel assigned to those agencies, yet it has never been thought that those agencies are not agencies of the civil side of the Government. Thus, persons in uniform but serving in the administration of the camp system are not performing military services; their activities are civilian in character. Cf. *Southern Pacific Co.* v. *United States,* 285 U. S. 240, 245–246; 29 Op. A. G. 298.

The meager legislative history of the civilian direction provision of Section 5 (g) shows that it was inserted into the Burke-Wadsworth bill by the Military Affairs Committee of the House. A representative of the Society of Friends explained to the Committee that the provision which be-

---

in the President or General Hershey, the Director of Selective Service.

came Section 5 (g) was a compromise worked out between the various religious organizations and representatives of the Government, whereby a conscientious objector would be accorded a hearing by the Department of Justice and supervision of him would be "in the hands of the War Department."[14] Hearings before the House Committee on Military Affairs, 76th Cong., 3rd sess., Vol. 1, p. 206.

The decision of the court below on this issue accords with that of the circuit court of appeals for the Sixth Circuit in *Kramer* v. *United States,* No. 9812, decided February 8, 1945, which, to our knowledge, is the only other opinion dealing with this question. A copy of the opinion has been lodged with the Clerk.[15]

---

[14] It appears that at the time this statement was made the Selective Service System had not yet been established and the persons to whom the witness referred were officers representing the War Department who are now assigned to the Selective Service System.

[15] The foregoing discussion assumes that petitioner's contention is open to him as a defense to a criminal prosecution under Section 11 for violation of the Selective Service Regulations. Without discussing all the possible ramifications of the question, the unequivocal penalization by Section 11 of a willful disobedience of the regulations suggests that it is arguable that a contention that a Civilian Public Service Camp to which a registrant is assigned is, contrary to the statute, not administered under civilian direction, is one which should be raised on habaes corpus; that until the regulations have, in some orderly fashion, been held contrary to the statutory authorization, a registrant may not willfully take it upon himself to refuse to comply with such regula-

3. Any doubt as to the lack of merit in petitioner's contentions that Congress has not authorized the Civilian Public Service Camp Program as administered by the Selective Service System is dispelled by ratifying legislation by Congress. From the inception of the Civilian Public Service Camp Program Congress has been apprised of the fact that conscientious objectors to both combatant and noncombatant military service are assigned to Civilian Public Service Camps; it has been informed of the nature of the work done at these camps; and it has been advised of the part played by General Hershey and other officers in the administration of the camp system. With this knowledge Congress in appropriations for the Selective Service System has provided that such amounts as may be necessary may be used for the administration of the program of work of national importance under civilian direction.[16]

---

tions and then be permitted in the resultant criminal proceeding to excuse his disobedience by asserting that the regulations should, under the statute, have been promulgated by someone else.

[16] See Hearings on H. R. 2788, Subcommittee of the Committee on Appropriations, House of Representatives, 77th Cong., 1st sess., pp. 824, 833, 834, 836, 838, 839; Act of April 5, 1941, 55 Stat. 92, 116; Hearings on H. R. 6430 before the Subcommittee of the Committee on Appropriations, House of Representatives, 77th Cong., 2d sess., pp. 438, 440; Act of June 27, 1942, 56 Stat. 392, 415; Hearings on H. R. 82 before the Subcommittee of the Committee on Appropriations, House of Representatives, 78th Cong., 1st sess., pp. 125–126, 149–150; Act of March

CONCLUSION

For the reasons stated we respectfully submit that the petition for a writ of certiorari should be denied.

CHARLES FAHY,
Solicitor General.
TOM C. CLARK,
Assistant Attorney General.
ROBERT S. ERDAHL,
IRVING S. SHAPIRO,
Attorneys.

MARCH 1945.

2, 1943, 57 Stat. 4; Hearings on H. R. 2935 before the Subcommittee of the Committee on Appropriations, House of Representatives, 78th Congress, 1st sess., pp. 221, 253, 265–267; Act of July 12, 1943, 57 Stat. 494, 518; Hearings on H. R. 2996 before the Subcommittee of the Committee on Appropriations, United States Senate, 78th Cong., 1st sess., pp. 194–202; Act of July 1, 1943, 57 Stat. 347, 350; Hearings on H. R. 4879 before the Subcommittee of the Committee on Appropriations, House of Representatives, 78th Cong., 2d sess., pp. 337–338, 363, 365–366, 380–394; Act of June 28, 1944, Pub. Law No. 372; see also, Hearing on S. 2708, Subcommittee of the Committee on Military Affairs, United States Senate, 77th Cong., 2d sess., pp. 2–28; Hearing on S. 315 and S. 675, Committee on Military Affairs, United States Senate, 78th Cong., 1st sess., pp. 13–23.